BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIANS ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014041135

DECISION

Student's guardians on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on April 24, 2014, naming the Oakland Unified School District. On May 14, 2014, Student filed an amended complaint. The matter was continued for good cause on May 28, 2014.

Administrative Law Judge Susan Ruff heard this matter in Oakland, California on September 16 and 17, 2014.

Student's guardians represented Student at the hearing. Student did not attend the hearing.[1]

M. Alejandra Leon, Esq., appeared on behalf of Oakland, along with John Rusk, Compliance Coordinator for Special Education.

At Student's request the matter was held open for two weeks to permit the filing of written closing argument by the parties. On October 1, 2014, upon receipt of the parties' written closing argument, the record was closed and the matter submitted for decision.

[1] One of Student's two guardians is also an educational advocate for Student. To distinguish between the two guardians, one will hereafter be referred to as Student's advocate, and the other will be referred to as Student's guardian. The plural term guardians will refer to both of them.

ISSUES[2]

1) Did Oakland fail to allow Student to return to school on April 24, 2014, by failing to provide transportation?

2) Did Oakland fail to provide Student instructional days from April 24, 2014, to the time of the hearing that were provided to other students and other disabled peers?

SUMMARY OF DECISION

This case involves a dispute over Student's transportation to his non-public school placement, and the issues that arose because of that dispute. Student contends that Oakland failed to provide transportation for him to attend his non-public school on April 24, 2014, and failed to provide instructional days on and after that date, causing Student loss of education. Student seeks compensatory education for the days missed.

Oakland contends that Student's guardians kept Student away from the non-public school placement for approximately two months before the dates in question. After Student's guardians faxed the signed individualized education program to Oakland on Monday, April 21, 2014, Oakland arranged for transportation to take Student to the non-public school on April 24. However, the non-public school could not take Student back on such short notice and asked that Student start on Monday, April 28 instead. After a telephone call between Student's advocate and the non-public school, the non-public school chose to terminate Student's placement there.

Oakland admits that it did not have a placement for Student from April 28, 2014, until Student began home/hospital instruction on May 15, 2014. Oakland also admits that it failed to provide Student with home/hospital instruction during the extended school year period from June 23, 2014, to July 19, 2014. Oakland has now placed Student in a different non-public school, which Student has been attending since mid-August.

This Decision finds there was no denial of a free appropriate public education based on the events that occurred on April 24, 2014. As for the second issue, there was a period in which Oakland did not have a placement for Student. There was also a time when Oakland failed to provide home/hospital instruction for Student during the extended school year. Student did not receive a FAPE during those two periods and compensatory education is warranted.

[2] On the first day of hearing, Student's complaint was amended to correct the date from April 23, 2014, to April 24, 2014.

FACTUAL FINDINGS

1. Student is a nine-year-old boy, eligible for special education under the eligibility categories of emotional disturbance and specific learning disability. The parties do not dispute that Student lived within the jurisdiction of the Oakland Unified School District at all times at issue in this case.

2. Prior to the times at issue in this case, Student's IEP team had placed Student in a non-public school called Tobinworld II. Student's guardians had concerns about the transportation provided by Tobinworld. Those concerns are described in detail in the decision in a prior due process case between the parties, OAH consolidated case number 2013100534/2013110827.[3]

3. Beginning in approximately February 2014, while that prior case was pending, Student's guardians kept him out of Tobinworld. On March 14, 2014, Student's IEP team met to discuss placement and transportation. During the meeting, the team agreed that a non-public school placement was appropriate for Student and discussed various possible schools. Student's guardians planned to visit possible placements. In the meantime, the IEP team discussed keeping Student at Tobinworld with transportation provided by Welcome Transport. Student guardians did not sign their agreement to the IEP that day, and Student did not return to Tobinworld.

4. Subsequent to the March 14, 2014 IEP team meeting, Oakland staff contacted Tobinworld to see if Tobinworld would be willing to take Student back, but no specific return date was discussed.

5. Between March 17, 2014, and April 18, 2014, Student's advocate and Oakland corresponded about whether Student's guardians would accept the offer of Welcome Transport to transport Student to and from Tobinworld. Although Student's guardians were generally in agreement with the March IEP offer, they had questions and concerns about how Welcome Transport would provide the service. They did not sign their agreement to the IEP during this time, and Student did not return to Tobinworld.

6. Student contends that Oakland knew that Student's guardians had accepted the March 14, 2014 IEP offer as early as March 17, 2014, based on the letters from Student's advocate. That contention is not well taken – each letter sent by Student's advocate made it clear that Student's guardians had *not* accepted the offer, but wanted clarification about the services Welcome Transport would provide.

7. On April 18, 2014, Student's guardians signed consent to the March 14, 2014 IEP. They faxed the signed IEP to Oakland on Monday, April 21, 2014. Oakland staff

[3] Official notice is taken of that decision pursuant to Government Code section 11515.

contacted Welcome Transport and learned that Welcome Transport could transport Student to and from Tobinworld beginning on Thursday, April 24, 2014. Robin Sasada, the Oakland employee who arranged for the transportation, telephoned Student's guardians on Tuesday, April 22, 2014, to let them know about the transportation.

8. Oakland staff also contacted Tobinworld. Student had been away from Tobinworld for approximately two months at that point, and Tobinworld was not able to take him back on such short notice. Tobinworld informed Oakland that Student could return to Tobinworld on the following Monday, April 28, 2014.

9. On Wednesday, April 23, 2014, Oakland informed Student's guardians that Student would begin at Tobinworld on April 28, 2014, instead of Thursday, April 24, 2014.

10. Student's guardians were displeased with the delay. Student's advocate telephoned Tobinworld on April 23, 2014. Sara Forghani, the principal for Tobinworld, was not in her office that day, so Student's advocate spoke with the administrative assistant. There is a factual dispute regarding the nature and tone of that conversation. Ms. Forghani described the conversation as harassing, and explained in a letter to Oakland dated April 24, 2014, that the administrative assistant was so shaken by the call that she asked to go home. During the hearing, Ms. Forghani described Tobinworld's past relationship with Student's guardians as "contentious." Student's advocate disagreed with Ms. Forghani's description of the conversation. She testified that she has never harassed or screamed at anyone at Tobinworld. She was surprised to hear Tobinworld say that she had harassing behavior.

11. For purposes of this Decision, it is not necessary to decide the nature and tone of that April 23, 2014 telephone conversation. The important thing is the result – after that conversation, Tobinworld decided to terminate Student's enrollment there.

12. On the same day, April 23, 2014, Student's advocate faxed a letter to Ms. Forghani at Tobinworld and John Rusk, the Compliance Coordinator for Oakland. The letter was copied to Student's case manager, the School Attendance Review Board, the Oakland Superintendent, and the Mayor of the City of Oakland. In the letter, Student's advocate objected to the delay in the start date at Tobinworld. The letter stated, among other things that, "If [Student] isn't allowed to go to school tomorrow we will consider another hearing and a formal lawsuit against both OUSD and Tobin World." The last paragraph of the letter, which was directed to the principal of Tobinworld, stated:

> Sara, we called to talk with you and you were in a meeting as usual. Annette said that you had no idea [Student] was coming back until you got my fax on Tuesday 4/21/14. I asked Annette what is there to get ready. She said they need to shift the classroom around and that tomorrow, namely Thursday 4/23/14 is a half day. Annette also stated that [Student] will not have enough days to earn Friday rewards and they don't want him mad. THESE ARE NOT REASONS TO BAR A STUDENT FROM SCHOOL AND FROM HAVING

THE SAME NUMBER OF INSTRUCTIONAL DAYS AS NON-DISABLED STUDENTS. I DEMAND A TELEPHONE CALL FROM SARA TONIGHT. I DON'T CARE HOW LATE IT IS.[4]

13. Although Student's guardians had actual knowledge that Student would not be attending school at Tobinworld on April 24, 2014, Student still got dressed for school that day and waited for Welcome Transport. When Welcome Transport did not come to take Student to Tobinworld, Student's guardians filed the instant due process case, contending that Oakland denied Student a FAPE by failing to have transportation to take Student to Tobinworld on April 24, 2014.

14. On April 24, 2014, Ms. Forghani sent a letter to Oakland issuing a 20-day notice to terminate the agreement by Tobinworld to provide educational services to Student. Although the contract between Tobinworld and Oakland technically required 20 days before a child could be disenrolled, it was apparent from Ms. Forghani's testimony that Tobinworld intended to terminate Student's enrollment immediately. When questioned about whether Tobinworld would have let Student attend school if he had been transported there on April 28, 2014, she testified, "That would have been a conversation that we would have had with the district . . . ."

15. Mr. Rusk testified that Tobinworld was quite upset about the behavior of Student's guardians, and Oakland was not sure if Tobinworld would even continue Student's placement during the 20 days. Based on a conversation that he had with Tobinworld, Mr. Rusk believed that Student did not have a non-public school placement as of April 28, 2014.

16. On Sunday, April 27, 2014, Oakland cancelled the April 28, 2014 Welcome Transport services for Student.

17. On April 28, 2014, Student got dressed for school and waited for Welcome Transport to arrive. When it did not arrive, Student's advocate contacted Welcome Transport and was informed that Tobinworld had dropped Student from its non-public school. No one from Oakland contacted Student's guardians prior to that day to let them know that Tobinworld had disenrolled Student. Student's guardian testified that she spoke with someone at Oakland after Welcome Transport did not arrive on the 28th, and was told that Student no longer goes to the school.

18. On that same day, Student's advocate faxed a letter to Welcome Transport, with a copy to Ms. Sasada. The letter recounted a conversation with Welcome Transport regarding the cancellation of the transportation until further notice. According to the letter, Student's advocate learned from Welcome Transport that Student "is not enrolled in school."

[4] The capitalization of the last three sentences was in the letter sent by Student's advocate.

19. At that point, Oakland did not have a placement for Student. Student's guardians were in the process of visiting other placements, but no alternative placement had been agreed upon by Student's IEP team.

20. On May 6, 2014, Student's advocate sent a letter to Mr. Rusk and others requesting that Student receive home instruction due to his stress level because of not being allowed to return to Tobinworld. Attached to the letter was a note from Stephanie Rosso, Ph.D., explaining that Student needed home instruction because his "absence from school is causing him considerable stress and is negatively impacting his mental health." Dr. Rosso requested that he be placed on home instruction "until these matters can be resolved with the school district."

21. On May 9, 2014, Oakland faxed a letter from Mr. Rusk to Student's guardians. The letter mentioned, among other things, that Tobinworld had terminated Student's enrollment. The letter also provided a prior written notice that Oakland was denying the request for home/hospital instruction because an IEP team meeting was required to change Student's placement. The letter stated that an IEP team meeting would be scheduled as soon as practical.

22. On May 13, 2014, Student's IEP team met and agreed to an amendment to his IEP to place him on home/hospital instruction. The notes of that meeting stated, in part:

> The parent advocate is asking for 8 week home instruction. Mr. Rusk stated that only offered at the most 6 weeks of home instruction because it is a temporary placement. In order to do that there would be two teachers with a week between the school year and the extended school year. The District changed the offer to continue through extended school year. The start date will be 5-15-14 and will end July 19th. The times will be 9:30 – 10:30 M – TH and F 11 – 12:00.

23. Student's November 6, 2013 IEP had called for Student to receive extended school year services from July 7, 2014, to August 15, 2014, but that IEP was superseded by the amendment on May 13, 2014.

24. On June 3, 2014, Student's advocate faxed a letter to various people, including Oakland staff members, explaining that Student was willing to accept placement at Edgewood School, a non-public school. The letter stated, in part:

> Therefore, after much discussion we as guardians for [Student] have definitively decided that we would like placement at Edgewood School as referenced above. It is our understanding from this site visit that placement is not being offered until the Fall session begins.

25. Oakland provided home/hospital instruction to Student beginning on May 15, 2014. The parties disagree about the date when the home/hospital instruction

ended. The records from Oakland show that home/hospital instruction was provided until the end of the regular school year on June 12, 2014. Student's advocate testified that her notes show that the home/hospital services were only provided until June 6, 2014. She believed that only 17 hours of home/hospital instruction were provided to Student.

26. The evidence supports Oakland's version of the events regarding when the home/hospital instruction ended. It appears that Student's advocate's notes may have been confused. If Oakland had provided 17 hours of home/hospital instruction (at one hour per day), as she testified, then the service must have continued beyond June 6, 2014. The number of school days between May 15, 2014, and June 6, 2014, is less than 17 days because of Memorial Day. If Student's advocate's testimony that Student received 17 hours of home/hospital instruction is correct, then the service must have continued beyond June 6, 2014.

27. Oakland's records regarding the home/hospital instruction were very clear and unambiguous regarding the start date of May 15 and the end date of June 12. There was no reason for Oakland to misstate the services given during the last week of the regular school year; Oakland was very candid regarding other dates during which Student was not provided with instruction. The weight of the evidence shows that Oakland properly provided Student with home/hospital instruction from May 15, 2014, to the end of the regular school year on June 12, 2014.

28. Student's extended school year home/hospital instruction was scheduled to run from June 23, 2014, to July 19, 2014, a period of 19 school days, not counting the Fourth of July holiday, and consisted of one hour per day of instruction. Student did not receive those days of instruction. During his testimony, Mr. Rusk admitted that it was a "complete dropped ball" by Oakland.

29. Student began his new non-public school placement at Edgewood School on August 18, 2014, the first day of the new school year for Edgewood.

30. Both Student and Oakland agree that compensatory education is warranted for those periods in which Oakland did not provide Student with instruction. However, they dispute the amount of compensatory education that should be provided to Student for the missed days.

31. Oakland admits that Student lost 13 days of instruction between April 28, 2014, and May 14, 2014, during the time Student did not have a placement because Tobinworld refused to take Student back. Oakland also admits that Student lost 19 days of extended school year instruction, between June 23, 2014, and July 19, 2014 when home/hospital instruction was not provided.

32. Mr. Rusk received his master's degree in special educational in 1997, and has worked in the field of education for approximately 20 years. He testified that it is typical to schedule one hour of direct, one-to-one instruction for each lost day of service. In his

opinion, direct instruction given one-to-one by a credentialed teacher is more intensive than group instruction. Oakland believes the 32 hours of one-to-one instruction would be sufficient to provide compensatory education for Student.

33. Student disagrees that one hour of direct, one-to-one instruction is equal to a day of school in a classroom. Student's advocate testified that Student missed six and one-half hours of instruction per day between April 24, 2014, and May 14, 2014. She calculated the total number of lost instructional time during that period as 91 hours.

34. Student also disagreed with Oakland's calculation for the number of days of instruction missed during the extended school year period. Student relied upon the November 2013 IEP, which had called for him to receive 270 minutes of extended school year services five times weekly, from July 7, 2014, to August 15, 2014. At the time of the November 2013 IEP, Student was attending Tobinworld, and the extended school year dates set forth in the IEP corresponded to the dates that Tobinworld offered extended school year services that summer.

35. Student believes that he should have received the full day of extended school years services (four and one-half hours per day), as called for in his November 2013 IEP, not one hour a day of home/hospital instruction. According to Student's written closing argument:

> ESY [Extended school year] at Tobin World should have been from 7/7/14 to 8/15/14 per the Principal Sara Forghani. The ESY school hours was from 8:30 to 1:00 p.m., or 4½ hours per day, which amounts to 1,350 hours per week. The offer in the 11/6/2104 IEP is for 6 weeks of extended school year. Therefore, if you multiply 1,350 weekly hours by six weeks, it equals 8,100 hours owed for extended school year. If you combined 91 hours with 8,100 hours, the petitioner believes the OUSD [Oakland] owes them a total of 8,195.5 hours of instructional time in compensatory educational.[5]

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq. (2006); Ed. Code, § 56000 et seq.) The main

[5] Student's written closing argument was typed in all capital letters. It has been changed to capital and small letters here for ease of reading. Aside from that change and aside from the words contained in brackets, all language in the quote is reproduced as it appears in the original document.

purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. The IDEA affords parents and school districts the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511 (2006); Ed. Code, §§ 56501, 56505.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

3. California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.) "Related Services" include transportation and other developmental, corrective, and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401 (26).)

Issues 1 and 2

4. Student first contends that Oakland failed to allow Student to return to school on April 24, 2014, by failing to provide transportation. The evidence did not support Student's contention. Oakland *did* arrange for transportation to take Student to school on April 24. It was the non-public school that requested to delay Student's return to school until the following Monday, April 28, 2014. The request to delay Student's start time from Thursday to Monday was reasonable, particularly given the amount of time that Student had been out of school.

5. Even if Oakland had failed to arrange for transportation that day, there was still no denial of FAPE. While a school district is required to provide the placement and services called for in a pupil's IEP, a minor failure to implement an IEP does not give rise to a denial of FAPE. Only a material failure to implement an IEP leads to a denial of FAPE. (*Van Duyn v. Baker School District* (9th Cir. 2007) 502 F.3d 811, 815.)

6. Under the facts of this case, a one or two day delay in returning Student to his non-public school placement did not amount to a material failure to implement his IEP. Student's guardians had kept him out of school for approximately two months prior to April 24, 2014. Once they agreed to the IEP amendment, which provided for new transportation, Oakland acted swiftly to arrange for that transportation and return Student to school. After keeping Student out of school for so long, Student's guardians could hardly complain about a two-day delay to permit Tobinworld to prepare for his arrival.

7. Student failed to meet his burden to show that Oakland denied Student a FAPE by failing to provide transportation to return him to school on April 24, 2014.

8. With respect to the second issue, Student met his burden to show there was a loss of instructional days and a denial of FAPE.

9. There is no dispute that Student lost instructional time after April 28, 2014, when Tobinworld refused to take him back. There is also no dispute that Student lost instructional time when Oakland failed to provide home/hospital instruction during the summer extended school year period. The only disputes are over how much instructional time he lost and what the remedy for that loss of instructional time should be.

10. Student's calculation of 8,100 hours of lost instructional time during the extended school year period is not supported by the record. It grossly overstates the amount of hours Student would have received, even if he had continued at Tobinworld. Four and one-half hours per day multiplied by five school days per week only comes out to 22½ hours per week, not 1,350 hours as Student contends. It appears that Student may have been confusing instructional *minutes* per week with instructional hours. If the 22½ hours per week are multiplied by six weeks, as Student claims should have been done, the total comes to 135 hours lost, not 8,100 hours as Student stated in his written closing argument.

11. However, even the figure of 135 hours is not supported by the evidence in the case. Student based his calculations upon the services set out in the November 2013 IEP. That IEP had been amended twice after November 2013. Those amendments, particularly the May 2014 amendment which Student's changed placement to home/hospital instruction, altered the nature of Student's schooling for the remainder of the school year and for the extended school year. Any calculation of time lost must be based on the May IEP actually in effect during the summer of 2014, not an older IEP.

12. Student's May 2014 IEP called for him to receive one hour of home/hospital instruction per school day during Oakland's extended school year period. Therefore, the most Student could have lost for instructional time was one hour per day, not four and one-half hours per day as Student contends. In addition, the extended school year in the May IEP ran for 19 days, not six weeks.

13. Oakland's calculations for the number of instructional days lost are accurate. From April 28, 2014, to May 14, 2014, Student lost a total of 13 instructional days. From June 23, 2014, to July 19, 2014, Student lost a total of 19 instructional days. Adding both of those numbers together, Student lost 32 instructional days.

14. The final question is how much compensatory education should be awarded for that lost time. Oakland believes that one hour a day of direct, one-to-one instruction provided by a special education teacher will be sufficient to compensate Student for any lost time. Student, on the other hand, believes that Student should receive six and one-half hours

per day for the first 13 days, and four and one-half hours per day for the 19 days of the extended school year.

15. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Parents of Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*). These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496; see also *School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996] (discussing the broad discretion of a court to fashion appropriate relief in a special education due process case).) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual pupil's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524 (*Reid*), citing *Puyallup, supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra*, 401 F.3d at p. 524.)

16. A review of the facts in the instant case shows strong equitable factors in favor of Oakland, particularly with respect to the time period between April 28, 2014, and May 14, 2014. As soon as Student's guardians signed the March IEP and faxed it to Oakland in April 2014, the Oakland staff expeditiously made arrangements for transportation for Student and contacted Tobinworld. It was not Oakland's fault that Tobinworld needed two extra days to prepare for Student's return. The request by Tobinworld staff to wait until the following Monday to bring Student back was reasonable under the circumstances.

17. While Student may dispute the nature of the April 23, 2014 telephone call that led Tobinworld to terminate Student's placement, there is one certainty about the situation: Oakland was completely blameless regarding Tobinworld's refusal to let Student return to the school. Indeed, the actions of Student's advocate and Tobinworld put Oakland between the proverbial "rock and a hard place." Oakland had to supply a placement for Student, but the non-public school would not accept Student back. Student's IEP called for Student to be placed in a non-public school, but there was no non-public school that Student's guardians had accepted at that time that was willing to accept Student.

18. Student's guardians clearly care deeply for Student and are zealous champions for his welfare. However, they must be cautious that their advocacy does not stray into over-zealousness. In this case, for example, Student's guardians were asking Oakland to do something it could not do. A public school district cannot force a private school, such as a non-public school, to teach a child if the non-public school does not wish to do so. Oakland had arranged for transportation, but it could not send Student to Tobinworld, because Tobinworld would not accept him once he arrived. It would not have been in Student's best interests for Oakland to transport him to Tobinworld on April 24 or April 28, 2014, only to

make Student sit in the transport vehicle while Tobinworld had a "conversation" with Oakland about whether Student could attend.

19. The one error Oakland made with respect to the situation on April 28, 2014, was the failure by Oakland to give formal notice to Student's guardians that Tobinworld would no longer accept Student in its program. However, Oakland knew that Student's guardians were aware of the situation. The April 28, 2014 letter from Student's advocate, which was copied to Ms. Sasada, indicated that Student's guardians knew that Student would not be returning to Tobinworld. Under those circumstances, Oakland's failure to send timely notice to the guardians is less serious than it might otherwise be and did not infringe on their ability to participate in the educational decision-making process.

20. Balancing the equities of this case, 13 hours of compensatory education provided one-to-one by a special education teacher is sufficient to make up for the 13 lost instructional days between April 28, 2014, and May 14, 2014. Mr. Rusk's opinion that an hour of direct, one-to-one instruction is sufficient to compensate for each missed school day is persuasive. Mr. Rusk is an experienced educator and was a credible witness. His testimony carries great weight.

21. With respect to the 19 days of home/hospital instruction that Student failed to receive during the extended school year, it is appropriate to award 19 hours of direct, one-to-one instruction by a special education teacher as compensatory education. Contrary to Student's claims, Student's May 2014 IEP called for Student to receive home/hospital instruction of one hour per day during the extended school year period, not six weeks of instruction at four and one-half hours per day. A compensatory award of 19 hours will provide Student with full compensation for each hour he missed during the extended school year time.

22. Student's contention that he should receive the amount of extended school year education that he would have received at Tobinworld is not supported by the equities of the case. It was not Oakland's fault that Student was unable to attend Tobinworld during that summer. Oakland did everything it could to try to return Student to Tobinworld during April 2014, but was thwarted through no error of its own.

23. Further, Student's own therapist insisted that Student needed home/hospital instruction. That home/hospital instruction was memorialized in an IEP signed by both parties. Student cannot now challenge his therapist's recommendation, particularly when it was not Oakland's fault that Tobinworld closed its doors to Student.

24. The appropriate remedy for Student is 32 hours of compensatory education to be provided by a special education teacher or teachers at Oakland's expense.

ORDER

1. Oakland shall provide Student with 32 hours of direct, one-to-one instruction as compensatory education.

2. This compensatory education shall be provided by a credentialed, special education teacher or teachers. Oakland, in its sole discretion, may provide the compensatory education using a teacher or teachers working for Oakland, a teacher or teachers working for the non-public school that Student attends, or a teacher or teachers working for a non-public agency, or any combination of such individuals.

3. Within 30 days of the effective date of this Decision, Oakland shall contact Student guardians to begin the arrangements for the compensatory education. The compensatory education shall be provided on dates and times agreeable to Oakland and to Student's guardians. Oakland, in its sole discretion, may choose the location where this compensatory education shall be provided. If the location is anywhere other than Student's home, then Oakland shall provide transportation for Student to and from the location.

4. Any compensatory education hours not used within one year after the effective date of this Decision, shall be forfeited.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on the second issue and Oakland prevailed on the first issue.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 13, 2014

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings